

**Commonwealth of Massachusetts  
Executive Office of Health and Human Services**

**NOTICE OF PUBLIC HEARING**

Under the authority of M.G.L. c. 118E and in accordance with M.G.L. c. 30A, the Executive Office of Health and Human Services (EOHHS) will hold a remote public hearing on Thursday, July 13, 2023, at 11 a.m. relative to the adoption of amendments to the following regulation.

**101 CMR 355.00: Rates for Freestanding Birth Center Services**

The proposed regulation contains rates effective for dates of service on or after November 1, 2023. There is no fiscal impact on cities and towns.

Under M.G.L. c. 118E, s. 13D, the Executive Office of Health and Human Services (EOHHS) is required to establish and periodically review the rates to be paid by governmental units for noninstitutional health care services, including freestanding birth center services. The proposed amendments maintain the current methodology, which utilizes the acute hospital Adjudicated Payment Amount per Discharge (APAD) and adjusts the rates for each service by case-mix weights for the lowest severity of illness (SOI) levels, but they update the data sources to reflect the applicable components used in calculating the RY2022 acute hospital APAD under the acute hospital Request for Application (RFA), as well as updated case-mix weights. The proposed amendments also apply a retrospective cost adjustment factor (CAF) of 7.53% to the malpractice add-on to inflate the rate to current and the two-year prospective rate period.

The estimated aggregate annual fiscal impact of the proposed amendments is \$14,000. The amendments are not anticipated to impose new costs on small businesses, and any impact on small business providers will vary based on the volume of services provided.

EOHHS is making these changes, subject to federal approval, to ensure that payments are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities, and to ensure that payment rates are consistent with efficiency, economy, and quality of care.

To register to testify at the hearing and to get instructions on how to join the hearing online, go to [www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings](http://www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings). To join the hearing by phone, call (646) 558-8656 and enter meeting ID 935 397 8200# when prompted.

You may also submit written testimony instead of, or in addition to, live testimony. To submit written testimony, please email your testimony to [ehs-regulations@mass.gov](mailto:ehs-regulations@mass.gov) as

an attached Word or PDF document or as text within the body of the email with the name of the regulation in the subject line. All written testimony must include the sender's full name, mailing address, and organization or affiliation, if any. Individuals who are unable to submit testimony by email should mail written testimony to EOHHS, c/o D. Briggs, 100 Hancock Street, 6<sup>th</sup> Floor, Quincy, MA 02171. Written testimony will be accepted through 5:00 p.m. on July 13, 2023. EOHHS specifically invites comments as to how the amendments may affect beneficiary access to care for MassHealth-covered services.

To review the current draft of the proposed regulation, go to [www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings](http://www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings) or request a copy in writing from MassHealth Publications, 100 Hancock Street, 6<sup>th</sup> Floor, Quincy, MA 02171.

Special accommodation requests may be directed to the Disability Accommodations Ombudsman by email at [ADAAccommodations@mass.gov](mailto:ADAAccommodations@mass.gov) or by phone at (617) 847-3468 (TTY: (617) 847-3788 for people who are deaf, hard of hearing, or speech disabled). Please allow two weeks to schedule sign language interpreters.

EOHHS may adopt a revised version of the proposed regulation taking into account relevant comments and any other practical alternatives that come to its attention.

In case of inclement weather or other emergency, hearing cancellation announcements will be posted on the MassHealth website at [www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings](http://www.mass.gov/service-details/executive-office-of-health-and-human-services-public-hearings).

June 9, 2023

## Small Business Impact Statement

*(As required by M.G.L. c. 30A §§ 2, 3 & 5)*

### CMR No: 101 CMR 355.00: Rates for Freestanding Birth Center Services

**Estimate of the Number of Small Businesses Impacted by the Regulation:** There is currently one MassHealth-enrolled freestanding birth center (FBC) paid at the rates set in 101 CMR 355.00.

#### Select Yes or No and Briefly Explain

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to create, file, or issue additional reports? No. The proposed amendments will not require small businesses to create, file, or issue additional reports.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to implement additional recordkeeping procedures? No. The proposed amendments will not require small businesses to implement additional recordkeeping procedures.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to provide additional administrative oversight? No. The proposed amendments will not require small businesses to provide additional administrative oversight.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Will small businesses have to hire additional employees in order to comply with the proposed regulation? No. The proposed amendments will not require small businesses to hire additional employees in order to comply with the proposed regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? No. The proposed amendments will not require small businesses to hire other professionals to comply with the regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation? No. The proposed amendments will not require small businesses to purchase a product or make any other capital investments in order to comply with the regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective? (Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.) No. The regulation is required by statute under M.G.L. Chapter 118E, Section 13C, and establishes the rates to be paid by governmental units to providers of noninstitutional health care services.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No. No other regulations duplicate or conflict with the proposed regulation.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? No. The proposed amendments do not require providers to periodically comply with audits, inspections, and other regulatory activities.

Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? No. The proposed amendments do not require small businesses to provide educational services to keep up with regulatory requirements.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? No. The proposed amendments are unlikely to deter or encourage the formation of small businesses in Massachusetts as this regulation governs payments for freestanding birth center (FBC) services provided to publicly aided individuals and is applied uniformly among providers.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? No. The proposed amendments are unlikely to deter or encourage the formation of small businesses in Massachusetts as this regulation governs payments for FBC services provided to publicly aided individuals and is applied uniformly among providers.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? No. The regulation does not distinguish between small and other businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? No. The regulation requires providers to submit documentation requested by the Commonwealth for purposes of utilization and provider review to ensure compliance with requirements, including the timelines for reporting, and the regulation is applied uniformly regardless of whether the provider is a small business.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Did the agency consolidate or simplify compliance or reporting requirements for small businesses? No. The regulation requires providers to submit documentation requested by the Commonwealth for purposes of utilization and provider review to ensure compliance with requirements, including the timelines for reporting, and the regulation is applied uniformly regardless of whether the provider is a small business.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? No. The regulation establishes uniform conditions of payment for the provision of FBC services to publicly aided individuals. These requirements are applied uniformly, regardless of the size of the provider's business, to maintain consistency in the care provided to publicly aided individuals.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Are there alternative regulatory methods that would minimize the adverse impact on small businesses? No. The regulation does not have an adverse impact on small businesses and governs payments for FBC services provided to publicly aided individuals and is applied uniformly regardless of whether the provider is a small business.